IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/04/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR

W.P. No.18765 OF 2001

T.S. Dhakshinamurthy ..... Petitioner

-Vs-

1. The Tamil Nadu Water Supply and
Drinage Board, rep. by its
Managing Director, Chennai

2. The Managing Director
Tamil Nadu Water Supply and
Drinage Board, Chennai ..... Respondents

Petition under Art.226 of the Constitution of India
praying for a Writ of Certiorari as stated in the petition.

For Petitioner :: Mr. N. Rajan

For Respondents :: Mrs. Sudarshana Sundar

:ORDER

This is a writ petition against the order holding the
petitioner guilty in a departmental enquiry for the charges framed against him
as also the subsequent confirmation of the order of punishment in an appeal
which was filed at the instance of the petitioner.
2. The petitioner was served with a charge-memo wherein four
charges were laid against him, they being:
Charge 1: that he has called for quotations during 7/98 for
carrying out the repairs works to clariflocculation units I for huge
value to which he is not empowered i.e. in violation of the
powers delegated in B.P. Ms.No.198 dated 5-5-1998.
Charge 2: that he has obtained quotations for the repairs works
to clariflocculation unit I from selected persons for
dismantling supply & refixing and work orders were
awarded to one and the same contractor Tr. S. Ambalavanan residing
at Madurai.
Charge 3:that he has failed to call for quota- 1 tions from reputed
accredited firms as per B.P. Ms.No.198 dated 5-5-1998.

Charge 4: the comparison of the cost of quotations approved for supply of ball bearing to Unit I by the contractor reveal that the cost paid is almost double and thus caused loss to the Board.

3. It is not the case of the petitioner that he was not given any opportunity or was not heard. A full-fledged departmental enquiry was gone into and he was found guilty of the first three charges completely and partly in respect of the fourth charge.

4. At the relevant time, the petitioner was working as Assistant Executive Engineer at Hosur in Tamil Nadu Water and Drainage Board (in short □TWAD Board□). As per the Board Proceeding Ms. No.198 dated 5 -5-1998, the Executive Engineer of the Board is empowered to make the purchases up to a particular limit for effecting the maintenance work and other works. At the relevant time, the petitioner was working under the Executive Engineer, TWAD Board, Krishnagiri and it was found that there was something wrong with Units I and II and that the Executive Engineer had attended the works for the maintenance of those units. While doing so, it was found that purchases were made to the extent of Rs.74.970/- for each unit by splitting the works into three parts. The total value of the work was obviously beyond the financial powers of the Executive Engineer but, it seems, that in order to avoid that, the works were split into three parts. The petitioner, who was working as Assistant Executive Engineer at that time and was heading the maintenance sub-division called for the quotations for these works from a particular contractor towards the purchases as also towards the labour charges. It was the case of the Board that the petitioner had no power to do so because as per the Board Proceedings No.9 8 dated 5-5-1998, that power did not lie even with the Executive Engineer. It was found that the petitioner called for the quotations from a particular contractor at Madurai, which is about 300 km away from Hosur, and his quotations alone were accepted. It was also found that the purchases ultimately made under those quotations were also at the higher side and thus the Board was put to financial loss. The only defence that the petitioner had raised was that he had acted under the instructions of the Executive Engineer and that he had acted in the best interests of the Board. At the stage of the departmental enquiry also the petitioner did admit that he had called the quotations instead of calling for the tenders; he also admitted that he had called the quotations from a particular contractor at Madurai; he also admitted that the whole work was spilt into three parts. However, all through he maintained that this was done at the instance and on the orders passed by the Executive Engineer. Needless to mention that at the enquiry, he could not justify his stand by producing anything in support of his plea that he was so ordered by the Executive Engineer. It was held to be proved that it was the petitioner who alone called for the quotations instead of calling the tenders. It was also held proved on the basis of that he called for the quotations only from a particular contractor, who was away from 400 km from Krishnagiri and a non-accredited contractor of the Board. On that basis, he was found guilty and it was proposed to inflict the punishment. The Enquiry Officer has also come to the conclusion that the Board was put to total loss of Rs.49,970/- and also further found that the petitioner was liable to make good the loss to the extent of Rs.8,328/-. The petitioner filed an appeal before the appellate

authority and the appellate authority has also rejected the appeal by its order dated 28-3 -2001 which necessitated the filing of the present writ petition before this Court.

5. Learned counsel very earnestly urged before me that the petitioner has not committed any misconduct in calling for the quotations and attending to the work which was of emergent nature. Learned counsel very earnestly urged that it was imperative on the part of the petitioner to call for the quotations and that in merely calling for the quotations he had not breached any rules.

6. I am afraid this cannot be accepted for the simple reason that it was not within the powers of the Assistant Executive Engineer, on which post the petitioner was working, to call for the quotations. In the first place, this was not within the powers of the Assistant Executive Officer because the value of the work was much more than the financial limit even for the Executive Engineer. Perhaps, to tide over this difficulty, the work was split into three parts and very strangely all the three works came to be given to the same contractor, that too to a contractor who was not a accredited contractor. Learned counsel pointed out that there was nothing on record to suggest that there was any other contractor available. In my opinion, all these will not be necessary for the simple reason that the petitioner himself had admitted that he had called the quotation and that he called the quotation only from one person, viz. Ambalavanan, who belonged to Madurai District. In view of all these admitted positions, it was not necessary for the concerned officer to go into the other question as to whether there was any such contractor available or not. Be that as it may, if the Enquiry Officer came to the conclusion that calling the quotations from a contractor from Madurai and not Krishnagiri was totally in derogation of the rules, I do not think anything can be said about that. It is trite law that the High Court in exercise of its power under Art.226 of the Constitution of India cannot act as an appellate authority in so far as the disciplinary enquiries are concerned. The power is limited only to see as to whether the material evidence is available or not. It is not for the High Court then to appreciate the evidence and come to the different conclusion. This is exactly what the learned counsel wants this Court to do. According to the learned counsel, there was no material on record even to suggest that there was any irregularity committed or any misconduct committed by the petitioner. I do not agree. It has already come on record that it was an admitted position even before the Enquiry Officer that it was the petitioner alone who had called for the quotation.

7. It was pointed out by the learned counsel appearing for the Board that normally the work should have been entrusted to the accredited contractor after calling for the tenders. However, the petitioner chose to award the work, that too by splitting the work into three parts so as to bring it within the financial powers of the Executive Engineer, to a particular contractor, who was not an accredited contractor and who was 400 km. away from Krishnagiri.

8. True it is that it is the Executive Engineer who accepted the quotation and distributed the amounts to the contractor. However, the petitioner□s responsibility cannot be ignored, who was in a responsible post like Assistant Executive Engineer, and as such the petitioner could have even refused to act beyond the powers even if he had asked to do so by his

superior, i.e. Executive Engineer. This is apart from the fact that the petitioner has not been able to lay hands on any material to suggest that this he did only at the behest of the Executive Engineer.

9. The learned counsel then pointed out that the orders passed by the disciplinary authority and the appellate authority are totally without any reasons and tend to be arbitrary. In support of his contention, the learned counsel heavily relied on the Supreme Court judgments in Central Bank of India Limited v. Prakash Chand Jain (AIR 1969 SC 983); State of Haryana and another v. Rattan Singh (AIR 1977 SC 15 12); Anil Kumar v. Presiding Officer and others (AIR 1985 SC 1121); and Kuldeep Singh v. The Commissioner of Police and others (AIR 1999 SC 677). Practically in all these cases the Apex Court has insisted upon the reasons being given by the disciplinary authorities as also the appellate authorities and there indeed can be no dispute for this proposition. However, one thing still has to be seen that in all these cases, there was no question of any admitted liability. This is a distinguishing factor. In this case, the petitioner has admitted his misconduct. He has himself admitted that it was he who called for the quotation from a particular contractor at Madurai.

10. Learned counsel then proceeds to argue that it should have been weighed and examined as to whether this breach of rule has in reality caused any loss to the Board or can it be said that in calling for the quotation in this manner the petitioner has committed any misconduct.

11. I have seen the rules and regulations meant for the employees of the Board and breach of any rule or regulation has been shown as a misconduct under rule 6(xxx). Therefore, the law laid down by the Apex Court would be of no help to the petitioner because unfortunately for the petitioner he has chosen to admit the fact that he had actually called for the quotation from a particular contractor, who was not an accredited contractor. His only defence was that he did all these at the behest of the Executive Engineer. However, the petitioner has not been able to produce any material to show that he did all these only at the behest of the Executive Engineer. Even at the cost of repetition I may say that even if the Executive Engineer had given him certain instructions to act illegally, the petitioner could have properly resisted. Unfortunately, the petitioner did not choose to do so and, therefore, has to suffer. I am told at the Bar even the Executive Engineer has been punished in the separate enquiry against him.

12. In fine, the petition has no merit and it is dismissed. No costs. Connected W.P.M.P. No.27599 of 2001 is closed.

Index:Yes
Website:Yes
Jai

To:

The Managing Director

Tamil Nadu Water Supply and
Drinage Board
Chennai